

Before the
 Federal Communications Commission
 Washington, D.C. 20554

In the Matter of)
)
 RON ABBOUD) File Nos. BLMD-9151617, BRMD-9157909
)
 Application for License and Renewal of)
 Multichannel Multipoint Distribution Service)
 Station WLW992, Omaha, Nebraska)
)

ORDER ON FURTHER RECONSIDERATION

Adopted: December 14, 2006

Released: December 15, 2006

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Order on Further Reconsideration*, we address a Petition for Reconsideration¹ (Petition) for Broadband Radio Service (BRS)² Station WLW992, Omaha, Nebraska, filed by Ron Abboud (Abboud) on March 9, 2005. In an Order³ dated November 13, 2003, the former Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau (PSPWD) found that Abboud’s license for Station WLW992 was forfeited pursuant to Section 21.44(a)(1)⁴ of the Commission’s Rules. In an Order on Reconsideration⁵ dated February 7, 2005 the Broadband Division granted in part and denied in part the *2003 Order*. Abboud then filed the current Petition on Reconsideration requesting review of the *2005 Order*.⁶ For the reasons discussed below, we deny Abboud’s Further Petition.

¹ Petition for Reconsideration, Ron Abboud (filed Mar. 9, 2005) (Further Petition). American Telecasting of Lincoln, Inc. filed an opposition on March 18, 2005. Opposition to Petition for Reconsideration, American Telecasting of Lincoln, Inc. (filed Mar. 18, 2005).

² On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* that transforms the rules governing the Multipoint Distribution Service (MDS) and the Instructional Television Fixed Service (ITFS) in order to encourage the deployment of broadband services by commercial and educational entities. Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *et al.*; WT Docket Nos. 03-66, *et al.*, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O & FNPRM*). To better reflect the forward-looking vision for these services, the Commission renamed MDS the Broadband Radio Service and ITFS the Educational Broadband Service. Because the new rules have taken effect, we will refer to BRS by its new name. Unless otherwise noted, the citations to rules will be to those rules in effect during the operative time period.

³ Ron Abboud, *Memorandum Opinion and Order*, 18 FCC Rcd 23807 (WTB PSPWD 2003) (*2003 Order*).

⁴ 47 C.F.R. § 21.44(a) (1994).

⁵ Ron Abboud, *Order on Reconsideration*, 20 FCC Rcd 2323 (WTB BD 2005) (*2005 Order*).

⁶ Further Petition.

II. BACKGROUND

2. On November 16, 1989, the Commission granted Abboud a conditional license to operate Station WLW992, in Omaha, Nebraska, with a transmit site location of 41° 12' 39" N, 96° 05' 14" W and a horizontal antenna polarization.⁷ On November 16, 1990, Abboud certified that he had completed construction of Station WLW992 by November 15, 1990.⁸

3. On May 16, 1991, Abboud requested special temporary authority (STA) to construct and operate an experimental low power, multichannel fixed transmitter from the top of the Omaha Inn at 108th and M Street in Omaha, Nebraska.⁹ In his STA request, Abboud acknowledged that his Station WLW992 was located at a different, but very close, site from the desired experimental site, and that he sought the requested authority to test the effectiveness of the temporary location as a "primary cell" for his experimental operations.¹⁰ Abboud's STA request was never granted. However, the Commission granted Abboud authorization for Experimental Station KI2XAD on November 15, 1991, effective until February 1, 1993.¹¹ The Commission then extended the authorization until February 1, 1995.¹² On November 21, 1991, Abboud filed an application for modification to change the location of Station WLW992, Omaha, to 41° 12' 41" N, 96° 05' 14" with horizontal antenna polarization.¹³ Commission records do not reflect that any action was ever taken on the application.

4. On July 30, 1993, Abboud's neighboring licensees, Wireless Entertainment Network (WEN), Inc.,¹⁴ and Line of Site (LOS),¹⁵ requested that the Commission's former Common Carrier Bureau order Abboud to cease transmitting and require Abboud to show cause why the Commission should not revoke his authorization.¹⁶ In that request, the Petitioners alleged that Abboud's operations on WLW992 and KI2XAD were causing impermissible interference to LOS's station.¹⁷ On March 21, 1994, WEN and LOS supplemented their WLW992 Request by alleging that Abboud was not operating in

⁷ The horizontal polarization is indicated on the Conditional License by the code "HMD 16HO-F." See Conditional License WLW992 (File No. 50226-CM-P-89) (granted Nov. 16, 1989).

⁸ See Certification of Completion of Construction for Station WLW992 (filed Nov. 16, 1990).

⁹ See Abboud Letter of Aug. 12, 1996 at exhibit Letter from James H. Yancey, Jr., Consultant for Ron Abboud to Experimental Radio Service, Federal Communications Commission (filed May 16, 1991) (STA Letter).

¹⁰ *Id.* at 2 citing 47 C.F.R. § 5.65 (1991).

¹¹ See Radio Station Construction Permit and License for Experimental Radio Station KI2XAD, File No. 2016-EX-RL-1992, Nov. 15, 1991; see also Radio Station Construction Permit and License for Experimental Radio Station KI2XAD, File No. 2016-EX-RL-1992, (Feb. 1, 1993).

¹² *Id.*

¹³ See Application For a New or Modified Microwave Radio Station License Under Part 21 for Station WLW992, Omaha, NE (filed by Ron Abboud on Nov. 22, 1991) (WLW992 Modification Application) at Petition, Exhibit 2.

¹⁴ WEN was a wireless cable system operator in the Omaha, Nebraska Metropolitan Statistical Area.

¹⁵ LOS has been the licensee of BRS Station WHT777 since 1983, and operates its station on the E Group channels.

¹⁶ Request to Compel Cessation of Service and Order to Show Cause filed by WEN and LOS (Jul. 30, 1993) (WLW992 Request). On August 19, 1993, Abboud filed a Motion to Strike. Motion to Strike (Aug. 19, 1993). See also Supplement to Motion to Strike (Aug. 20, 1993) Opposition to Motion to Strike (Sep. 1, 1993); Supplement to Opposition to Motion to Strike (Sep. 2, 1993); Answer to Complaint (Sep. 2, 1993).

¹⁷ WLW992 Request at 4.

compliance with his authorization.¹⁸ Concurrently with the WLW992 Request, and for the same reasons, WEN, LOS, and other neighboring licensees Libmot Communications Partnership (Libmot),¹⁹ Young Communications (Young),²⁰ and Gould Communications (Gould)²¹ requested that the Commission's Office of Engineering and Technology (OET) order Abboud to cease transmitting and require Abboud to show cause why the Commission should not revoke his authorization for Experimental Radio Station KI2XAD.²²

5. On May 15 and July 22, 1996, the Commission's former Mass Media Bureau, Video Services Division sent letters of inquiry to Abboud in an effort to clarify the status of the operations of Station WLW992.²³ In response, Abboud filed sworn declarations on May 28, 1996, June 17, 1996, and August 12, 1996.²⁴ Abboud stated in his declarations that:

“Station WLW992 is [now] operating from the Omaha Inn, 108th and L St., Omaha, Nebraska, at coordinates ... 41 12 42 N and 96 04 54 W.”²⁵

¹⁸ Supplement to Request to Compel Cessation of Service and Petition for Order to Show Cause (Mar. 21, 1994) (WLW992 Supplemental Request); *See also* Opposition to Supplement to Compel Cessation of Service and Petition for Order to Show Cause (Apr. 29, 1994); Supplement to Opposition (May 6, 1994); Request for Extension of Time to Reply to Opposition (May 11, 1994); Reply to Opposition to Supplement to Compel Cessation of Service and Petition for Order to Show Cause (Jun. 1, 1994); Motion to Strike (June 16, 1994); Opposition to Motion to Strike (June 22, 1994).

¹⁹ Libmot was the BRS licensee of Station WNTG452 on the H Group channels.

²⁰ Young was a BRS licensee of Station WNTF452 on the H Group channels.

²¹ Gould was BRS licensee of Station WNTF307 on the H Group channels.

²² Request to Compel Cessation of Service and Order to Show Cause filed by Libmot Communications Partnership (Libmot), Young Communications (Young), and Gould Communications (Gould), WEN, and LOS (filed July 30, 1993) (KI2XAD Request). On August 19, 1993, Abboud filed a Motion to Strike. Motion to Strike (Aug. 19, 1993). *See also* Opposition to Motion to Strike (Sept. 1, 1993); Supplement to Opposition to Motion to Strike (Sept. 2, 1993); Answer to Complaint (Sept. 2, 1993); Reply to Opposition to Motion to Strike (Sept. 10, 1993); Reply (Sept. 15, 1993); Supplement to Reply (Sept. 22, 1993). During the period July 30, 1993 through June 1994, Petitioners and Abboud filed a series of pleadings and motions with the Commission related to the above captioned matters. On September 8, 1994, the Ad Hoc Committee for Wireless Development Partners I (the “Committee”) filed four virtually identical pleadings styled “Petition to Cancel or Revoke License” each respectively against the following four Omaha licensees (collectively, the “Omaha Licensees”): LOS for BRS Station WHT777 (E-Group Channels), Young for BRS Station WNTF452 (Channel H1), Libmot for BRS Station WNTG 452 (Channel H2) and Gould for BRS Station WNTF307 (Channel H3). On October 21, 1994, the Omaha Licensees filed a Consolidated Opposition to Petitions to Cancel or Revoke License. The Committee's Petitions to Cancel or Revoke were dismissed for failure to respond to the December 18, 2002, Public Notice released by the Wireless Telecommunications Bureau. *See Wireless Telecommunications Bureau Seeks to Verify ITFS, MDS, and MMDS Pending Legal Matters, Public Notice*, DA 02-2752, 67 Fed. Reg. 69529-04 (rel. Oct. 18, 2002) (*October Public Notice*).

²³ *See* Letters from Daniel R. Ball, Attorney, Video Services Division, Mass Media Bureau, Federal Communications Commission to Ron Abboud, File No. 50226-CM-P-89 (filed May 15 and August 12, 1996) (VSD Letter of May 15, 1996) and (VSD Letter of August 12, 1996). Abboud filed responses to these letters on May 28, 1996, June 17, 1996, and Aug. 12, 1996. *See* Letters from Stephen Yelverton, Attorney for Ron Abboud to Daniel R. Ball, Attorney, Video Services Division, Mass Media Bureau, Federal Communications, File No. 50226-CM-P-89 (filed May 28, June 17, and Aug. 12, 1996) (Abboud Letter of May 28, 1996, Abboud Letter of June 17, 1996, and Abboud Letter of Aug. 12, 1996).

²⁴ *See* Abboud Letter of May 28, 1996, Abboud Letter of June 17, 1996, and Abboud Letter of Aug. 12, 1996.

²⁵ Abboud Letter of June 17, 1996 at Question 1; Abboud Letter of August 12, 1996 at Question 4.

“Station WLW992 was originally constructed on November 15, 1990, at 11111 M St. It is authorized to operate on the F-Group channels.”²⁶

“Operations at the Omaha Inn location have used vertical polarization since about July 31, 1992. The experimental authorization, KI2XAD, did not specify or require horizontal polarization.”²⁷

6. On November 13, 2003 the Public Safety and Private Wireless Division (PSPWD) found that Abboud’s license for Station WLW992 was forfeited pursuant to Section 21.44(a)(1) of the Commission’s Rules,²⁸ because Abboud was operating it at a different location and at a different polarization than was authorized pursuant to the station’s conditional license.²⁹ Further, the Division dismissed Abboud’s applications for covering license (File No. BLMD-9151617) and for renewal of license of Station WLW992 (File No. BRMD-9157909) filed on November 16, 1990, and March 29, 1991 respectively.³⁰ Moreover, the Division found that the pleadings filed with respect to Experimental Station KI2XAD were moot because the license for that station expired on February 1, 1995.³¹

7. On December 15, 2003, Abboud filed a Petition for Reconsideration and Request for Reinstatement of License of the *2003 Order*.³² American Telecasting of Lincoln (ATL) promptly filed an Opposition to Abboud’s Petition for Reconsideration and Request for Reinstatement of License on January 14, 2004 and Abboud responded to the Opposition on January 28, 2004.³³

8. In an Order on Reconsideration dated February 7, 2005, the Broadband Division found Abboud’s license for Station WLW992 was forfeited pursuant to Section 21.44(a)(3) of the Commission’s Rules.³⁴ The *2005 Order* found that Abboud voluntarily removed and altered Station WLW992, so as to render the station not operational for a period of 30 days or more.³⁵ The Broadband Division also found that *2003 Order* ruling Abboud’s license was forfeited pursuant to Section

²⁶ *Id.*

²⁷ Abboud Letter of June 17, 1996 at Question 2, and Abboud Letter of August 12, 1996 at Question 4.

²⁸ 47 C.F.R. § 21.44(a)(1) (1994).

²⁹ See *2003 Order*, 18 FCC Rcd at 23812 ¶ 13.

³⁰ *Id.* at 23813 ¶ 17. On June 20, 2003, the Division dismissed Abboud’s pending application File No. BLMD-9151617 with respect to Station WLW992 for failure to respond, when in fact Abboud did respond to the *October Public Notice*. See Wireless Telecommunications Bureau Announces Action on Responses to Public Notice Regarding ITFS, MDS, and MMDS Pending Applications, *Public Notice*, DA 03-2057 at Appendix B (rel. June 20, 2003) (*June Public Notice*). On October 10, 2003, that application was reinstated. See Wireless Telecommunications Bureau Grants Petitions for Reconsideration of ITFS, MDS, and MMDS Applications That Were Dismissed Without Prejudice on June 20, 2003, *Public Notice*, DA 03-3157 (rel. Oct. 10, 2003).

³¹ See *2003 Order*, 18 FCC Rcd at 23812 ¶ 14.

³² Ron Abboud, Petition for Reconsideration and Request for Reinstatement of License (Dec. 15, 2003) (2003 Petition)

³³ Opposition to Petition for Reconsideration and Request for Reinstatement of License, American Telecasting of Lincoln (Jan. 15, 2004). Reply to Opposition, Abboud (Jan. 28, 2004).

³⁴ *2005 Order*, 20 FCC Rcd at 2327 ¶ 9.

³⁵ *Id.*

21.44(a)(1) rather than Section 21.44(a)(3) was erroneous and reversed it.³⁶ Furthermore, the Broadband Division concluded that PSPWD properly determined that Abboud did not secure proper authorization to relocate Station WLW992.³⁷

9. On December 15, 2005, Abboud filed the Further Petition, which requests review of the determination that he violated Section 21.44(a)(3) leading to the forfeiture of the license for Station WLW992.³⁸ Abboud argues that while he did move the location of Station WLW992, it was continuously in operation so a violation of Section 21.44(a)(3) is impossible.³⁹ Abboud also takes issue with the legal precedent used by Bureau and claims the *2005 Order* was based on a material error in fact and a material error in law.⁴⁰

III. DISCUSSION

10. The Further Petition offers no basis for reconsidering the *2005 Order*. Like his earlier pleadings, Abboud's Further Petition is based on the premise that relocating the transmitter from 11111 M St (the authorized transmitter site of Station WLW992) to the Omaha Inn (the authorized site of experimental radio stations KI2XAD) was a continued operation of Station WLW992.⁴¹ Both the *2003 Order* and the *2005 Order* rejected that argument. The *2003 Order* said, "Abboud's argument that his experimental authorization for Station KI2XAD also provided him with a STA allowing him to relocate Station WLW992 and operate it from the Omaha Inn with technical parameters different than those specified in his authorization for Station WLW992 is meritless."⁴² Similarly, the *2005 Order* rejected the repeated argument that Station WLW992 was relocated as the result of an STA and an experimental authorization.⁴³ Any operation from the Omaha Inn was not pursuant to the license for Station WLW992. Abboud offers no new facts or evidence to support his argument. It is well established that "rehearing will not be granted merely for the purpose of debating matters on which the tribunal has once deliberated and spoken."⁴⁴ Accordingly, we summarily reject this argument.

11. Abboud also argues that the *2005 Order's* reliance on the *Warren Ache*⁴⁵ case is misplaced because that case addresses Section 21.44(a)(1) of the Commission's Rules,⁴⁶ not Section 21.44(a)(3) of the Commission's Rules.⁴⁷ While Abboud is correct that the authorization in *Warren Ache* was forfeited pursuant to Section 21.44(a)(1), the relevance of *Warren Ache* is the principle that once a transmitter is being operated in a manner inconsistent with an authorization, the authorization subject to

³⁶ *2005 Order*, 20 FCC Rcd at 2326 ¶ 8.

³⁷ *2005 Order*, 20 FCC Rcd at 2328 ¶ 11.

³⁸ See Further Petition.

³⁹ Further Petition at 2.

⁴⁰ Further Petition at 2.

⁴¹ Further Petition at 2.

⁴² *2003 Order*, 18 FCC Rcd at 23811 ¶ 11.

⁴³ *2005 Order*, 20 FCC Rcd at 2328 ¶ 11.

⁴⁴ *WWIZ, Inc., Memorandum Opinion and Order*, 37 FCC 685, 686 ¶ 2 (1965), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965).

⁴⁵ *Warren Ache, Memorandum Opinion and Order*, 9 FCC Rcd 2464 (1993).

⁴⁶ 47 C.F.R. § 21.44(a)(1).

⁴⁷ Further Petition at 2.

forfeiture pursuant to Section 21.44(a).⁴⁸ In this case, once Abboud relocated the transmitter from 1111 M Street, he was no longer operating pursuant to the authorization for Station WLW992. Once he removed the facilities for a period of more than 30 days, the authorization for Station WLW992 was automatically forfeited pursuant to Section 21.44(a)(3) of the Commission's Rules.

IV. CONCLUSION AND ORDERING CLAUSES

12. With respect to Abboud's argument that Stations WLW992 was validly relocated, the Further Petition does not comply with the Commission's Rules because it does not rely on any new or unknown facts and circumstances and his arguments have previously been rejected. Abboud's attempt to distinguish the *Warren Ache* case is unavailing. We therefore deny the Petition.

13. Accordingly IT IS ORDERED that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Ron Abboud on March 9, 2005 IS DENIED.

14. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
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⁴⁸ Warren Ache, 9 FCC Rcd at 2468-2469 ¶¶ 9-10.